IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

CRP.No. 417 of 2007()

E.P.527/06 IN OS.1194/2003 of PRL.M.C.,ERNAKULAM

.....

REVN. PETITIONER:

N.S.PRAKASHAN, S/O. SREEDHARAN
NADAKKAL HOUSE
PIRAVITHANAM, PALA, MEENACHAL TALUK
KOTTAYAM

BY ADV. SRI.V.S.BABU GIREESAN

RESPONDENTS:

A.K.SUBADRAMMA, PEETHUMADATHIL HOUSE
DIWAN'S ROAD, ERNAKULAM

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P No. 417 OF 2007

Dated this the 25th May, 2007.

O R D E R

This revision petition is preferred against the order of the Principal Munsiff, Ernakulam in E.P.527/06. An execution petition was filed for realisation of the amount by arresting the judgment debtor. The decree holder was examined as P.W.1. He deposed before the court that the judgment debtor is having a monthly income of Rs.4,000/- and his attempt is only to defeat payment to the decree holder. The judgment debtor even did not mount the box. Instead, he examined a person under whom he is said to be employed. He had deposed before the court that the judgment debtor is not employed with him at present. But notice in the execution petition was served on the judgment debtor in the very same address and it would indicate that what the employer was telling is not the truth. When the petitioner has mounted the box and given evidence to the effect that the judgment debtor is an employee having a monthly income of Rs.4,000/- at least it was a paramount duty on the judgment debtor to mount the box and give evidence that it is not correct. He did not choose to mount the box. So, rightly it has to be held that if examined, evidence would be against him. The trial court

has analysed the evidence of P.W.1 and R.W.1 and has arrived at the conclusion that what P.W.1 speaks is the truth and the evidence tendered by R.W.1 is not satisfactory. The executing court also took note of the point that the judgment debtor was a young man aged 34 years without any ailment and he took it as one of the grounds to probabilise the evidence tendered by P.W.1. Being a civil case the preponderence of probabilities will have to prevail and it is in that angle the matter has to be analysed and understood. Therefore, I do not find any ground to interfere with the decision of the learned Munsiff regarding the plea of no means. If the judgment debtor wants to pay the amount he must be given some opportunity and therefore I am inclined to hold that he need not be sent to prison immediately but be given one month's time to make payment of the decree debt. If he does not pay that amount within that stipulated time, the decree holder is at liberty to execute the warrant for realisation of the amount. C.R.P is dismissed.

M.N. KRISHNAN
Judge

jj